

United States  
Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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JOHANNA HIRLINGER,

Petitioner,

vs.

SAMUEL L. BOYD, as Trustee in Bankruptcy of  
THE LANE LUMBER COMPANY, LIMITED,  
ED, a Corporation, Bankrupt,

Respondent.

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In the Matter of THE LANE LUMBER COM-  
PANY, LIMITED, a Corporation, Bankrupt.

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On Petition for Revision from the United States  
District Court for the District of Idaho,  
Northern Division.

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Reply Brief of Petitioner, Johanna Hirlinger, on Revision.

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FRANK LANGLEY,

Attorney for Petitioner,  
Coeur d'Alene, Idaho,

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Filed this.....day of February, 1914.

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**FILED**

Clerk.

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THE LANE LUMBER COMPANY, LIMITED,  
a Corporation, Bankrupt,

Respondent.

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In the Matter of THE LANE LUMBER COMPANY,  
LIMITED, a Corporation, Bankrupt.

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Reply Brief of Petitioner, Johanna Hirlinger, on Revision.

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FRANK LANGLEY,  
Attorney for Petitioner,  
Coeur d'Alene, Idaho,



THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE NINTH CIRCUIT.

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JOHANNA HIRLINGER,

Petitioner,

vs.

SAMUEL L. BOYD, as Trustee in Bankruptcy of  
THE LANE LUMBER COMPANY, LIMITED,  
a Corporation, Involuntary Bankrupt,  
Respondent.

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In the Matter of THE LANE LUMBER COM-  
PANY, LIMITED, a Corporation, Involuntary  
Bankrupt.

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Counsel for the Respondent persists in stating alleged facts without reference to the record, and which are not found in the record. Referring to the argument on page 4 of Respondent's brief: It is not in the record that Johanna Hirlinger participated in the administration of the bankrupt estate, nor that she voted as an unsecured creditor; and it is immaterial whether she did so or not, for she gained no advantage thereby and the other creditors have not

been prejudiced in consequence of it. In Loveland on Bankruptcy. (4th Ed.), sec. 346, it is said:

“The simple fact that he (the creditor) participated in the election of the trustee, when there is no evidence that he gained any advantage thereby, or that the other creditors have been in anywise prejudiced in consequence of it, or that he was influenced by any fraudulent intent, will not preclude a claimant from making his proof of debt.

In re McConnell, No. 8712 Federal Cases.

Nor is there anything in the record in this case as to what claims of unsecured creditors have been allowed by the Court, and such a question is immaterial and irrelevant to the issues herein.

It is true that in the Memorandum Decision of the District Judge (Record p. 27) it is said that the trustee has paid in full a trust deed covering these together with other lands, but such question was not in issue before the District Court, and could not properly be considered by the Court. This question, with authorities, is fully discussed in petitioner's brief at pages 13 and 14.

Claimant is not seeking a compromise as contemplated by Section 58a (7) of the Bankruptcy Act. She is seeking recognition of her right to file a substituted proof of secured debt established by the State law; and it was not necessary that she accompany her offer to repay to the trustee any moneys ex-

pended for taxes, by an actual tender of the cash. It was not even necessary to make the offer. If it is found that the trustee is entitled to a return of the tax money, the claimant's vendor's lien may properly be allowed subject to the trustee's lien for taxes or any other moneys expended by him on account of the lands involved.

*London & San Francisco Bank v. Dexter Horton & Co.* 126 Fed. 593, 607 (C. C. A. 9th Cir.).

The only real issues raised by the Respondent's Brief are these:

FIRST: Can a proof of claim be amended, in any event, after the expiration of one year subsequent to the adjudication of bankruptcy?

SECOND: Can a claim, filed, through ignorance, inadvertance and mistake, as an unsecured debt and allowed as such, be withdrawn and a proof of secured debt substituted therefor after the expiration of one year from the date of adjudication?

On the first question the law is clear that a claim may be amended after the expiration of a year from the date of adjudication. All that is required is that a provable debt shall have been filed within the year.

*Remington on Bankruptcy*, Secs. 622, 734 and 735.

*Loveland on Bankruptcy*, (4th Ed.), Sec. 333.

Collier on Bankruptcy, 1909, page 615 (d).

Where the original claim was filed within the year, an amended claim based thereon may be filed after the expiration of the year. The amendment may allege the facts to make a different case, but the facts must be substantially the same.

Remington on Bankruptcy, Secs. 619 and 622.

On the second question the answer, we think, must also be in the affirmative. It is not permissible that a new debt may be filed after the expiration of the year, but an amended proof of claim based upon the original debt and asking for a different relief should be permitted to be filed. Claimant is not asserting a new claim.

In re Ashland Steel Co., (C. C. A. 6th Cir.), 168 Fed. 679.

In re Robinson, 136 Fed. 994.

In this case the original proof of debt (Record p. 8) is based upon two promissory notes, the consideration of which is therein alleged to be as follows: "Purchase price  $W\frac{1}{2} NW\frac{1}{4}$  and  $SE\frac{1}{4} NW\frac{1}{4} SW\frac{1}{4} NE\frac{1}{4}$ , Sec. 1, T. 49 N., R. 2 E. B. M., Shoshone County, Idaho". But through ignorance, inadvertance and mistake, and without knowledge of the law, claimant filed her claim for said price and interest as an unsecured debt (Record p. 29). The above described premises are the premises against which the



claimant now asks permission to assert her vendor's lien given by Section 3441 and 3443 of the Idaho Revised Codes. No conveyance of the property has been made, and no dividends have been declared. In *Loveland on Bankruptcy*, (4th Ed.), Sec. 345, it is said:

"A proof of debt, made under a mistake of fact or law, may be withdrawn, if no action has been based upon such proof which can not be recalled or compensated."

In *re Faulkner*, (C. C. A. 8th Cir.), 161 Fed. 900.

A creditor may withdraw the proof of his claim as unsecured and may substitute therefor one as secured;

*Remington on Bankruptcy*, Sec. 765.

In *re Friedman*, 1 A. B. R. 510.

In *re Strickland*, 167 Fed. 867.

and he may withdraw his proof of unsecured debt and substitute therefor a proof of secured debt after the expiration of the year.

*Bennett v. American Cr. Indemnity Co.*, 159 Fed. 624.

Even though dividends have been declared, an amendment will be permitted upon condition of the return of the dividends.

In *re Baxter*, 12 Fed. 72.

The cases of *In re Peck*, 168 Fed. 48; and *In re McIntyre Co.*, 176 Fed. 552, cited in Respondent's

brief at page 6, were cases where leave to file *original claims* after the expiration of the year was asked, and denied. The case of *In re Hawk*, 114 Fed. 916, cited in respondent's brief at page 6, was a case where the bankrupt was denied leave to amend his Schedules by the addition of a new claim more than one year after having been adjudged a bankrupt. In *Loveland on Bankruptcy*, (4th Ed.), Sec. 333, cited in respondent's brief at page 6, it is said: "An amendment may be allowed after the year period to assert a priority under a state statute." Therefore, none of the foregoing authorities, cited by respondent, supports the contention for which it is cited.

Respectfully submitted,

FRANK LANGLEY,

Attorney for Petitioner,

Address: Coeur d'Alene, Idaho.

Copy of foregoing brief received this 13<sup>th</sup> day  
of February, 1914.

E. N. LaVeine

Attorney for Respondent

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